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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-123

BETTY O. MUKA,
APPELLANT,

v.

FRANK A. CARTER, JR.,
CHIEF DISCIPLINARY COUNSEL,
APPELLEE.

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL FROM THE RHODE ISLAND SUPREME COURT

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BRIEF OPPOSING MOTION TO DISMISS APPEAL

Answers to Questions Presented by Appellee

1. Yes. The April 19, 1985 Order of the Rhode Island Supreme Court was a final judgment or decree. (491 A.2d 334 (R.I.1985))

2. No. Appellant's constitutional challenges to the Disciplinary Rules of the Rhode Island Supreme Court should be heard in the United States Supreme Court on the instant appeal, as of statutory right. (28 U.S.C. 1257(2))

3. Yes. This Court does have jurisdiction to review the Questions Presented by Appellant which "do not raise federal issues." (i.e. Fiske v. Kansas)

4. No. Appellant should not have requested review of the April 19, 1985 Order of the Rhode Island Supreme Court by certiorari. (I.e. Zauderer case)

ARGUMENT

ANSWER # 1 - YES. THE APRIL 19, 1985 ORDER OF THE RHODE ISLAND SUPREME COURT WAS A FINAL ORDER OR DECREE.

5. As a matter of fact, the Rhode Island Supreme Court Clerk has docketed the Order of indefinate suspension of Appellant attorney, dated April 19, 1985, as a final judgment. (Verified by telephone to Beverly Clark in the Rhode Island Supreme Court Clerk's Office on September 30, 1985.)

6. As a matter of fact, the Rhode Island Supreme Court Reporter has reported the Order dated April 19, 1985 as an official

decision of the Rhode Island Supreme Court and it has been officially reported at 491 A.2d 334.(R.I. 1985). (No R.I. Reports yet.)

7. Rhode Island Supreme Court Rule 42-15(d) states inter alia that "Orders imposing suspension or disbarment shall be effective immediately unless this court otherwise directs. ..." The order of suspension of Appellant did not "otherwise direct" and the suspension was instant.

8. Rhode Island Supreme Court Rule 25 is entitled "Reargument" and states inter alia, "Petitions for reargument of causes heard and decided shall be filed in the office of the clerk within five (5) days after the filing of the decision." The order dated April 19, 1985 did not reach Appellant until April 29, 1985, after the time for petitioning for reargument had expired. Appellant did not petition for reargument, and the Order

became unreviewable by any court in the State of Rhode Island on April 24, 1985.

9. Rhode Island General Laws, Title 8, Chapter 7, Section 1 states inter alia, "The supreme court shall be in session at Providence from the first Monday in October in each year to the second Monday in July in the succeeding year, ..." Thus, the term of the Rhode Island Supreme Court in which the order dated April 19, 1985 was made, ended on July 8, 1985, and that court lost any jurisdiction it might have claimed that it had on July 8, 1985.

10. Appellant filed and docketed her Notice of Appeal and Jurisdictional Statement on July 18, 1985, after the Rhode Island Supreme Court lost all possible claim to any jurisdiction on July 8, 1985, and within 90 days of entry of the order dated April 19, 1985, thus effectively and timely taking her appeal as of right under Title 28 U.S.C. 1257(2).

11. At one time, the United States Supreme Court took the narrow view that finality was to be determined solely from the face of the judgment. Houston v. Moore, 3 Wheat. 433 (1816).

12. More liberal views of finality were expressed from time to time, and the position has now been expanded so that the Court will look not only to the judgment and opinion but also, where necessary, to any other pertinent factor within or without the record. Department of Banking v. Pink, 317 U.S. 264, 268.(1942).

13. This Court should consider that Appellant has been suspended since April 19, 1985 (over 5 months as of this writing) from the practice of law, without any further decision or order of the Rhode Island Supreme Court, and when any jurisdiction it ever claimed must have expired as a matter of Rhode Island law, and that the Order of suspension dated April 19, 1985 did

not state that Appellant was guilty of the violation of any specific Disciplinary Rule or Ethical Consideration, nor did it make any findings of fact, when under traditional principlies of constitutional due process of law there must be findings of fact and conclusions of law before a decision is made and particularly before action is taken, and the court must have jurisdiction before it does anything - all of which were lacking at bar.

14. Rhode Island due process standards are exhibited in the Rhode Island Rules of Civil Procedure, Rule 52(a) which requires inter alia that:

> "In all actions tried upon the facts without a jury ..., the court shall find the facts specially and state separately its conclusions of law thereon... which constitute the grounds of its action."

But the Rhode Island Supreme Court did not do that when it rendered its Order of suspension dated April 19, 1985.

15. Even under Rhode Island case law purportedly "Interlocutory orders will be treated as possessing sufficient elements of finality and reviewed immediately when such a determination is necessary to prevent injurious consequences" as at bar. State v. Piedmont Funding Corp., 394 A.2d 694 (R.I. 1978).

16. But the ultimate test of finality is formulated by the Supreme Court. As stated in Department of Banking v. Pink, supra at 268:

> "The test is not whether under local rules of practice the judgment is denominated final ... but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that that adjudication is not subject to further review by a state court."

At bar, the Rhode Island Supreme Court is supposed to be the appellate court in disciplinary proceedings (Supreme Court Rule 42-6, and Rhode Island Constitution Amendment XII for all cases), but without ori-

ginal jurisdiction it conducted the one and only hearing, without any possibility of review by any court in the State of Rhode Island. The action taken by it is not subject to further review by any Rhode Island court; not even itself.

17. The rights in issue were fully adjudicated by the Rhode Island Supreme Court. Appellant pleaded 20+defenses, including the lack of subject matter and personal jurisdiction to pervert Appellant's sworn statements against judges and attorneys into a disciplinary proceeding against the one who reported such, and including challenges that certain disciplinary rules of conduct and procedure were unconstitutional on their face and as applied to her and the class of attorneys of which she was a member, and that the Constitution of the State of Rhode Island was unconstitutional, all under the United States Constitution, Amendments #1 and #14 and in violation of

her federal rights guaranteed thereunder to freedom of speech, constitutional due process of law and equal protection of law. The Rhode Island Supreme Court, by its Order dated April 19, 1985 showed that it ignored the constitutional challenges to the laws and applied them unconstitutionally and would not uphold or enforce any of such federal rights, and sought to prevent any review of its acts by any court. In effect, the federal rights in issue were fully adjudicated to not exist, and the Rhode Island Supreme Court intended that adjudication to be final and forever unreviewable. The United States Supreme Court has jurisdiction to review such.

18. An order has been held to be final even though the details had not yet been determined, as at bar. Brown Shoe Co. v. United States, 370 U.S. 294 (1961).

19. An administrative order is final which establishes the legal rights and re-

lationships as to which liabilities or sanctions may accrue, as at bar. Rochester Telephone Corp. v. United States, 307 U.S. 125, 130-1. (1939).

20. An administrative order was deemed final which fixed a definite status to which sanctions attached and could not be reopened or collaterally attacked in any other proceeding, as at bar. LaCrosse Telephone Corp. v. Wisconsin Board, 336 U. S. 18. (1948).

21. The United States Supreme Court has ruled that:

> "The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment ... Our test is a practical one. When the case is decided, the time to seek our review begins to run."

Market Street R. Co. v. Railroad Commission 324 U.S. 548, 551-2. (1945).

22. No further order of the Rhode Island Supreme Court can change the fact that such

Rhode Island Constitution, Supreme Court Rule 42 and specific Disciplinary Rules were applied to Appellant and as a result she was suspended from the practice of law, in derrogation of her federally guaranteed rights and when such laws were repugnant to the United States Constitution and laws, and Appellant is aggrieved thereby, and has no right to review anywhere except in the United States Supreme Court.-

ANSWER # 2 - NO. APPELLANT'S CONSTITUTIONAL CHALLENGES TO THE DISCIPLINARY RULES OF THE RHODE ISLAND SUPREME COURT SHOULD BE HEARD IN THE UNITED STATES SUPREME COURT ON THE INSTANT APPEAL, AS OF STATUTORY RIGHT, NOT INITIALLY IN THE U.S. DISTRICT COURT. (28 U.S.C. 1257(2))

23. It is an irrelevant question to ask whether or not there is some other court with jurisdiction over the issues at bar. The only correct question is whether

or not the United States Supreme Court has jurisdiction in the instant appeal as of right, and the answer is, "Yes." (A-1,A-2) (Conceded at bottom of p. 6, Appellee's motion)

24. Defense #19 in each of the two disciplinary proceedings being appealed herein was " Respondent-Attorney herewith reserves the right to raise other defenses, if and when they may come to her attention." (A-2)

25. Such defenses did come to her attention and were raised both in the disciplinary hearings and the day before they were scheduled to begin, by commencing the civil action in the United States District Court for the District of Rhode Island in which claim #1 and claim #2 were federal questions. (A-2 to A-13 herein) Appellee's Appendix B is the caption of the case. (Muka v. Supreme Court of Rhode Island, et al), and Appendix C shows that both the U.S. District Court and the First Circuit Court of Appeals abstained from enforcing the federal question jurisdiction that it had. No appeal was taken from the First Circuit order,

and such abstention is the law of the case. It simply is not true for Appellee to say that the U.S. District Court will rule on Appellant's constitutional challenges in that case, because its abstention is final. The constitutional questions were expressly raised in the Verified Complaint and in the brief on appeal, and were totally ignored, and the merits were totally ignored. Furthermore, additional constitutional issues arose during the disciplinary proceedings and they are not the subject of the case in U.S. District Court commenced before the disciplinary hearings, and these additional issues are only at bar on appeal.

26. The United States Supreme Court cannot "abstain" from deciding the constitutional issues raised on an appeal as of right from the highest state court. This is extremely important at bar, because there is no other review possible, since the R.I. Supreme Court held the only hearing below. (28 U.S.C. 1257(2))

ANSWER # 3 - YES. THIS COURT DOES HAVE JURISDICTION TO REVIEW THE QUESTIONS PRESENTED BY APPELLANT WHICH "DO NOT RAISE FEDERAL ISSUES." (i.e. Fiske v. Kansas)

27. Appellee argues that "Most of the Questions Presented by Appellant raise no federal statutory or federal Constitutional issue, but call only for the construction of the statutory or Constitutional law of the State of Rhode Island." However, the facts of the case show that such Rhode Island Constitution and laws and rules were unconstitutionally applied to Appellant in violation of her federally guaranteed rights, especially her 14th Amendment rights to equal protection of those state constitutional and rule provisions, and rights to constitutional due process under them, and such application to Appellant made them void under federal law. Thus, review by writ of certiorari and by appeal are both proper at bar. Appellee

is incorrect in characterizing these violations as "non-federal" in nature.

28. Appellee only quotes 28 U.S.C. 1257 (1) and (2) to try to show that "non-federal" issues cannot be raised by "appeal." But 28 U.S.C. 1257(3) allows review by certiorari "where any ... right ... is specially set up or claimed under the Constitution ... of the United States," and this, of course, includes Appellant's rights under the 1st and 14th Amendments to the United States Constitution, to freedom of speech and constitutional due process and equal protection of such state laws. Just because a question of state law is raised does not mean that it is "non-federal", because equal protection under the law of the state is a federal issue, not only when it is unconstitutionally applied, but when it is unconstitutional on its face and repugnant to the United States Constitution and/or laws.

29. A statute can be challenged as invalid on its face, or as applied to the Appellant's particular set of facts, or both. The state court's silence in this respect is immaterial and cannot destroy the right to appeal under Sec. 1257(2). Thus, an erroneous failure to pass on the federal constitutional objections to the state statute is treated as equivalent to a finding of validity within the meaning of Sec. 1257(2), so that an appeal will lie. Lawrence v. State Tax Commission, 286 U.S. 276, 282-3 (Miss. 1932).

30. The Order of suspension was completely devoid of any mention of any state or federal law, and thus there is no "adequate state ground" to prevent the constitutional questions from being decided by the United States Supreme Court.

31. Although the Order of suspension made no findings of fact, it did appear to make conclusions of fact, and Appellant

challenges them as being based upon "no evidence" at all. The Supreme Court will review a state court's findings "where a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts." Fiske v. Kansas, 274 U.S. 380, 385-6 (1927). Both exceptions to the general rule appear at bar, and this Court should review the complete record - which is shocking. (See excerpts A-14-A-18)

32. This Honorable Court has felt itself free to make an independent examination of the facts when necessary to decide whether a person has been deprived by a state court of a right secured by the Constitution. Norris v. Alabama, 294 U.S. 587, 590 (1935); Chambers v. Florida, 309 U.S. 227, 228-9

(1940). Thus, an issue of "no evidence" is not a "non-federal" issue when a federal right has been denied under those circumstances, as at bar.

33. In Napue v. Illinois, 360 U.S. 264, 271-2 (1959), the Supreme Court referred to "the long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts or constructions upon which federal constitutional issues rest." Thus, Appellee's argument that such "constructions" are not reviewable by appeal (or by certiorari), has no merit.

ANSWER # 4 - NO. APPELLANT SHOULD NOT HAVE REQUESTED REVIEW OF THE APRIL 19, 1985 ORDER OF THE RHODE ISLAND SUPREME COURT BY CERTIORARI. (i.e. Zauderer case)

34. Appellee's question #4 is irrelevant and has no merit.

35. 28 U.S.C. 2103 provides that an

appeal improvidently taken will be acted on as a petition for writ of certiorari, i.e. as in Slagle v. Ohio, 366 U.S. 259, 264.(1961).

36. Consider the following discussion at p. 73 of Stern v. Gressman, 3rd Ed.:

> "An additional problem arises when a case presents several federal questions, some of which are reviewable by appeal and others only by certiorari. Where the requirements for taking an appeal can be met, there are two alternatives open to the appellant for securing review of the nonappealable issues, as pointed out in Flurnoy v. Wiener, 321 U S. 253, 263. He can include in the questions presented on the appeal "any other denial of federal right whether or not capable in itself of being brought here by appeal," in which event the nonappealable issues will be considered along with the merits of the appealable issues. See Prudential Ins. Co. v. Cheek 259 U.S. 530, 547. ... The first course would be preferable in most cases."

37. In the light of the above discussion and cases, Appellant hereby amends her Jurisdictional Statement to include in addition to the "Questions Presented" the words underlined above, thus mooting question #4.

36. This Honorable Court has recognized its mandatory jurisdiction to review by appeal disciplinary actions taken by state courts against attorneys where the disciplinary rules of conduct, and disciplinary procedures used, under which discipline was imposed were challenged as unconstitutional under the United States Constitution or laws, as at bar.

37. In a case of exactly the same nature as at bar, and just recently decided on May 28, 1985 this Honorable Court decided an appeal (No. 83-2166) entitled Philip Q. Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, (53 LW 4587), in which it made findings of fact that one of the attorney's advertisements was not false or deceptive, and was protected commercial speech under the First Amendment, and reversed that reprimand, and voided a disciplinary rule banning illustrations in advertising, but found that Ohio procedures did not violate due process.

38. But Rhode Island procedures violate due process and this appeal is the only review.

43. This Honorable Court exercised its jurisdiction by granting a writ of certiorari in the case of In Re Robert J. Snyder (No. 84-310 decided June 24, 1985, 53 LW 4833) to review disciplinary action against an attorney for writing a letter to a United States District Court Judge in North Dakota which resulted in his 6 months suspension by the Chief Judge of the Court of Appeals for the Eighth Circuit.

44. This Honorable Court interpreted and construed a disciplinary rule (FRAP 46) and a disciplinary matter and a disciplinary order and a disciplinary suspension, by way of writ of certiorari, reversing the order, finding inter alia that "as officers of the court, members of the bar may appropriately express criticism on such matters" as the administration of a legal program.

45. The case at bar is similar in some respects to In Re Snyder, in that it was appropriate for Appellant to make the statements that she made in a Motion for a New Trial, in her client's behalf, which placed on the record both intrinsic and extrinsic fraud and professional misconduct and judicial misconduct which were proper grounds for a new trial, and furnished the original of such statements to the Rhode Island Commisson on Judicial Tenure and Discipline, both of which it was her duty to do under DR 1-103(A) and (B). The case at bar has additional gigantic substantial federal questions of great and widespread public interest, and the determination of this appeal will have great effect in all states of the United States, since all have similar disciplinary rules, if not procedures, and the right and duty to client and court and the profession should be protected.

CONCLUSION

For the aforesaid reasons, plus hundreds more, Appellant, Betty O. Muka, respectfully requests that the Motion to Dismiss the Appeal from the April 19, 1985 Order of the Rhode Island Supreme Court be denied, and that the Appeal be allowed to be fully briefed and the record below of the proceedings commenced in the first instance in the Rhode Island Supreme Court be considered by this Honorable Court and the many greatly substantial federal constitutional questions under the 1st and 14th Amendments to freedom of speech, constitutional due process, and equal protection of the law, relating to this Appellant attorney and all attorneys in the United States, be carefully decided on the merits, as well as the order of indefinate suspension of Appellant reversed.

Respectfully submitted,
Betty O. Muka, Appellant
113 Kay St., Ithaca, N. Y.
Mrs. Betty O. Muka

(Excerpt from Appellant's "ANSWER, (20) DEFENSES, AND COUNTER-PETITION" to both disciplinary petitions simultaneously prosecuted; some constitutional issues:)

127. The statments made in "Ex. A" were an exercise of the First Amendment right to freedom of speech.

128. Licensed attorneys have such First Amendment rights.

129. Any Disciplinary Rule that imposes a prior restraint upon speech is unconstitutional on its face and as applied, in violation of the First Amendment of the United States Constitution.

130. DR 8-102(B) is unconstitutional, as a prior restraint upon speech.

131. DR 7-106(C)(4) is unconstitutional, as a prior restraint upon speech.

132. Supreme Court Rule 42-7, entitled "Immunity" and stating inter alia that "Members of the Board, Counsel and staff shall be immune from suit for any conduct

in the course of their official duties," is unconstitutional on its face and as applied, in violation of the 14th Amendment guarantee and prohibition against states from denying its citizens the equal protection of the law. (...etc.)

143. Respondent-Attorney herewith reserves the right to raise other defenses, if and when they may come to her attention.

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(Excerpt from Appellant's Verified Complaint in U.S. District Court raising federal questions related to the disciplinary proceedings, dated November 13, 1984, served, filed and raised during discipline)

9. The Constitution of the State of Rhode Island is unconstitutional under the United States Constitution, particularly the 14th Amendment, because the Rhode Island Constitution does not guarantee constitutional due process of law and equal protection of the law or freedom of speech to citizens and/or inhabitants of Rhode Island.

10. Because of the absence of such guarantees of such fundamental rights, litigants in state law claims and in common law claims and federal claims and in administrative matters, in the Rhode Island courts and administrative bodies, are deprived of such guarantees, and their rights to such federally guaranteed rights are not guaranteed in the State of Rhode Island.

11. The Constitution of the State of Rhode Island is also unconstitutional by reason it has been unconstitutionally applied to this plaintiff, and is also about to be further unconstitutionally applied to this plaintiff.

12. Plaintiff has standing to raise this constitutional issue.

13. The Supreme Court of the State of Rhode Island has issued an order for a proceeding to be had before it on November 14, 1984, commencing at 11 a.m., which proceeding deals substantially and materially

and directly with plaintiff and plaintiff's valuable property rights and plaintiff's business and profession and calling and reputation, etc.

14. In connection with such proceeding, plaintiff has already been deprived of her constitutional rights under the United States Constitution, 14th Amendment, to constitutional due process of law and equal protection of the law, and further deprivation appears to be imminent.

15. The deprivations already suffered at the hands of (80 defendants listed, see Motion to Dismiss, pp A-5) include:

a. malicious administrative prosecution by persons "immune" from civil liability for such,

b. perjured pleadings by persons "immune" from civil liability for such,

c. retalliation for plaintiff's cooperation with Disciplinary Counsel and the Disciplinary Board and Commission on

Judicial Tenure and Discipline by furnishing sworn statements and complaints of professional misconduct and judicial misconduct witnessed by plaintiff and her clients and others,

d. protection and refusal to discipline persons reported by plaintiff and proven to have committed acts well-established to constitute professional misconduct and judicial misconduct,

e. harassment by the number and frequency of false charges and communications requiring timely responses,

f. secreting the names and statements (if any) of any persons complaining against plaintiff,

g. obstructing all discovery (which by unconstitutional rule is discretionary, and without right, as opposed to all other civil and criminal litigants),

h. obstruction of compulsory process to obtain witnesses (which by unconstitutional

rule is discretionary, and without right, as opposed to all other civil and criminal litigants),

i. vague pleadings which lump statements of fact and lump rules violated, and refusal to state them more clearly so that the facts related to each violation are separated from others, which civil litigants have a right to request restated under R.C.P. 12(e)

j. prohibiting all depositions (which by unconstitutional rule is discretionary, and without right, as opposed to all other civil litigants), except allowing the prosecution to do so without restraint & preventing plaintiff from any,

k. terrorization by the Supreme Court completely obstructing all planned and relevant oral argument in plaintiff's 2 cases argued on appeal there on 11/8/84, showing that plaintiff will never be allowed to be heard on 11/14/84, etc.

l. basing complaints on the timely and proper filing of notices of motion and supporting affidavits in lawsuits for clients, which grounds and affidavits were uncontradicted and were adjudicated to prove intrinsic and extrinsic fraud committed by a justice and several lawyers in the Superior Court (Judge Rodgers, lawyers DeSimone, Surdut, Macksoud, Bengtson), yet relief under R.C P. 60 (similar to F.R.C.P. 60) denied, despite proof of the grounds authorized by Rule 60 on the timely motion made to vacate fraudulent orders of dismissal of 2 cases (Guido D'Arezzo vs. Estate of Catherine Christy and Fireman's Fund Insurance Company P.C. 76-904, and Guido D'Arezzo vs. Gerald Christy P.C. 75-3108) dated 1/5/84. ...

m. secret meetings and motions and decisions in the matters against plaintiff, without notice of any motion, without any grounds stated, without any affidavits of facts,

without any basis in law, and with no constitutional due process for notice or any opportunity to defend or object or to raise any issues of fact or law,

n. Disciplinary Counsel's obstruction of complaints against himself, including not having a special prosecutor appointed to prosecute him and not giving his mandatory answer within 20 days,

o. Disciplinary Board members (AGRESTI, CHERNICK, KIERNAN, KILMARX, LAVINE, LYNCH, PALMISCIANO, VACCA) obstruction of complaints against them, including not having a special prosecutor appointed to prosecute them and not giving their mandatory answers within 20 days,

p. suspending all subsections of R.I. Supreme Court Rule 42 (dealing with disciplinary complaints against lawyers, including Disciplinary Counsel and the Disciplinary Board members) so that the processing of disciplinary complaints a-

gainst Disciplinary Counsel and the Disciplinary B ard members is obstructed,

q. suspending and/or abusing all subsections of R.I. Supreme Court Rule 42 in regard to plaintiff, and creating new and different rules which are applicable to this plaintiff only and never have and never will be applicable to any other person, depriving this plaintiff of the equal protection of the law and due process of law.

r. Disciplinary Counsel and Disciplinary Board and the Supreme Court conspiring to and agreeing to suspend all rules for the purpose of retalliating against this plaintiff for performaing her professional duties under DR 1-103(a) and (b) in reporting misconduct of lawyers and judges to the proper authorities and trying to uphold the integrity of the profession, and for the purpose of protecting and promoting and rewarding the wrongdoers who have been reported by plaintiff and for the purpose of severely

and irreversibly injuring this plaintiff to cover up for their own wrong deeds (including crimes)

s. imposing silence regarding all such matters,

t. many other acts and omissions depriving this plaintiff of her federal guaranteed fundamental rights of constitutional due process and equal protection of the law,

u. The Supreme Court proceeding without jurisdiction, etc.

16. Unless a temporary restraining order is issued, followed by a preliminary injunction and perhaps a permanent injunction, the federal rights guaranteed by the United States Constitution will be further violated by the above named defendants (paragraph 15, first part) on November 14, 1984 commencing at 11 a.m., and immediate and irreparable damage to plaintiff, plaintiff's reputation, business, calling, and personal property rights will be or may be

irreversibly damages.

17. There is an immediate and gigantic need for this court to issue a declaratory judgment that the Rhode Island Constitution is unconstitutional under the United States Constitution for failing to guarantee constitutional due process of law and equal protection of the law and freedom of speech, on its face, and as applied to this plaintiff and the disciplinary process.

21. R.I. Supreme Court Rule 42, entitled "Complaints against attorneys" is unconstitutional in a material part, depriving the clearly defined and suspect class of lawyers of their constitutional rights to equal protection of the law and due process of law as guaranteed under the 14th Amendment to the U.S. Constitution, and is being unconstitutionally applied to this plaintiff.

(Paragraphs 22-28 detail the unconstitutional parts of Supreme Court Rule, omitted here)

29. Because the constitutionality of a

statute or rule cannot be challenged unless a person has standing to do so, as plaintiff at bar does have, the rule on confidentiality would seem to endanger a person which standing from making the constitutional challenge which, of course, must be made in public in court. It is eseential that this subsection be ruled to be unconstitutional in this lawsuit as an impermissible prior restraing upon constitutionally protected speech.

30. In regard to the above subsections of Rule 42, there is no rational relation to a legitimate state interest that is served by subjecting the discrete class of lawyers to the deprivation of rights which are constitutionally protected and which are statutory rights for all other classes of persons, i.e. depositions are as of right under R.C.P. 30 without any permission, a trial by jury is a right under R.C.P. 38 and 39 and Rhode Island Constitution,

Article I, Section 15, discovery is as of right under R.C.P 26-37 with provisions for sanctions against anyone obstructing it, there is no rule requiring silence in any other type of matter, criminal or civil, R.C.P. 45 authorizes subpoenas, which can be issued in blank, and subpoena deuces tecums for production of documents - all statutory rights which lawyers in disciplinary proceedings are deprived of unconstitutionally. It serves no legitimate state purpose. Lawyers are very valuable assets to the State, and there is not possible reason they should be deprived of their constitutional and statutory rights in matters affecting their license to practice law. There is absolutely no guarantee that the disciplinary procedures are free from the taints that due process of law and equal protection of the law are designed to remedy and contain.

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(Excerpts from disciplinary hearing)

p. 1281, lines 7-8 - MRS. MUKA: "I'm trying to disprove the petition."

JUSTICE SHEA: "That's not what's before us."

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p. 1241-2 - MRS. MUKA: "...paragraph 3 of D.B 247 (one of the disciplinary petitions) is in issue. This is a verified complaint. Mr. Carter has alleged under oath that a complaint has been made to him. I want to know the name of the person who complained to Mr. Carter and the date and I want to see it." MR. CARTER: ... "In this instance, I filed a complaint with myself."

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p. 1231, lines 15-16 - JUSTICE MURRAY: (to Muka) "... You have put the Disciplinary Committee in the position where they have recused themselves..."

p. 1232-3 - JUSTICE WEISBERGER: (to Carter) "... did you ever present the com-

plaint against Mrs. Muka to the Disciplinary Board? WITNESS CARTER: "Yes."
p. 1256 - WITNESS CARTER: "... A report was written for the Disciplinary Board with a recommendation. The Disciplinary Board reviewed the report and voted that a petition for disciplinary action should issue and we're here now." MRS. MUKA: "What was the date of the Board meeting?" WITNESS CARTER: "I don't recall." MRS. MUKA: "Upon a challenge that it didn't, what would be your answer to that question?" MISS MANAGHAN (Asst. Disciplinary Counsel) "Objection." JUSTICE KELLEHER: "Sustained." MRS. MUKA: "Who were the members of the Disciplinary Board that took (part) in that vote?" WITNESS CARTER: "I don't recall. I would have to look at the minutes."
p. 1336-7 MRS. MUKA: "... Mr. Carter, I have talked with some members of the Disciplinary Board and they have told me that they did not participate in any vote to

discipline me. Now didn't you say that the Board did eventually decide to bring charges against me?" WITNESS CARTER: "No."

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p. 1299, line 8 - JUSTICE SHEA: "We didn't decide to prosecute."

p. 1304 - MRS. MUKA (to Carter, Disciplinary Counsel): And what investigation did you do in regard to this matter before you charged me?" JUSTICE MURRAY: "He didn't charge you with anything."

p. 1340 - MRS. MUKA "Did you at any time do any investigation, Mr. Carter?" MISS MANAGHAN: "Objection." JUSTICE KELLEHER: "Sustained."

p. 1250- MRS. MUKA: "Mr. Carter has signed a verified complaint against me saying that my statements were false and I want to know from you, Mr. Carter, what information you had that my statements were false." MISS MANAGHAN: "I'm going to object. ... He asserts her statements were false." MRS.

MUKA: "You mean my statements under oath in affidavit form are proof that they are false?" JUSTICE SHEA: They contain a statement. An affidavit could contain such inherently improbable facts ..." JUSTICE MURRAY: "They contain accusations." JUSTICE SHEA: "Accusations only. They are not fact." ... JUSTICE WEISBERGER: ... Mrs. Muka, your statements in support of your motion for new trial are admittedly your statements." MRS. MUKA: "And they were admitted by the opposing party who did not oppose them." JUSTICE WEISBERGER: They are defamatory and therefore, unless you can prove the truth, they would be improper."

p. 1382 - MRS. MUKA: "Are you familiar with the law of torts --" JUSTICE WEISBERGER: "I'm reasonably familiar with the law of torts." MRS. MUKA: "-- where in judicial proceedings you're absolutely privileged to say defamatory statements."

JUSTICE WEISBERGER: "That's not so, Mrs. Muka. That's not so." MRS. MUKA: "You're absolutely privileged if the statements are defamatory and they bear a relationship to the proceeding, they're absolutely privileged." JUSTICE WEISBERGER: "If the material is scurrilous, impertinent and scandalous, it is not privileged." MRS. MUKA: "... the only test is whether or not the statements are relevant to the proceedings in which they are stated." JUSTICE WEISBERGER: "All right, Mrs. Muka, that's part of your final argument." p. 1812 - JUSTICE KELLEHER: "The arguments are over." ... MRS. MUKA: "I thought I was going to be given an opportunity to file a brief on the law." JUSTICE KELLEHER: "No. No. There's no necessity for briefs." MRS. MUKA: "When I tried to give testimony, the Court wouldn't let me say anything about the law, and I was told that I could --" JUSTICE KELLEHER: "Court is adjourned."